



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: EAC-98-03750683

Office: Vermont Service Center

Date: JAN 10 2000

IN RE: Petitioner:  
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

**Public Copy**

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

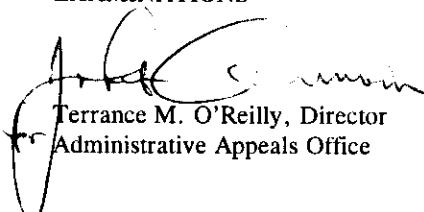
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), in order to employ her as a lay religious instructor. The director denied the petition finding that the beneficiary's claimed volunteer work with the church did not satisfy the requirement of having had at least two years of continuous work experience in a religious occupation during the period immediately preceding the filing date of the petition. The director also questioned the credibility of the petition in that the proposed position was referred to as a "Hindu religious instructor" in documentation submitted by counsel.

On appeal, counsel for the petitioner submitted a brief arguing that the reference to a Hindu religious instructor was a typographical error on the part of counsel and that the petitioner has adequately testified to the beneficiary's past experience.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner is an independent church referring to itself as a Pentecostal organization. Documentation was submitted that the Internal Revenue Service granted the "Victory Assembly" recognition as a tax exempt religious organization in a letter dated January 29, 1996. The beneficiary is described as a forty-eight-year-old female native and citizen of [REDACTED] who last entered the United States on May 7, 1994, as a B-2 nonimmigrant visitor. The record indicates that the beneficiary remained beyond her authorized stay and has resided in this country since such time in an unlawful status. The petitioner failed to respond to the question on the petition form requiring the disclosure of any unauthorized employment in this country.

It must first be noted that the petitioner did not provide all required information on the petition form. Absent all required information, the petition cannot be properly adjudicated. The petition may be denied as incomplete solely on this basis. See 8 C.F.R. 103.2(a)(1). Nevertheless, the appeal will be reviewed on its merits.

At issue in this proceeding is whether the beneficiary's voluntary participation in church activities satisfied the statutory requirement that she have been continuously carrying on a religious occupation for at least the two years preceding filing.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on November 14, 1997. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a religious occupation for at least the two years from November 14, 1995 to November 14, 1997.

An official of the petitioning church originally declared that the beneficiary has served the church as a full-time volunteer religious instructor since September 1995.

The statute requires that a beneficiary have been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. The regulations are silent on the question of volunteer work satisfying the requirement. In order to qualify for special immigrant classification in a religious

occupation, however, the job offer for a lay employee of a religious organization must show that he or she will be engaged in salaried employment and be sufficient to establish that he or she will not be dependent on supplemental employment. See 8 C.F.R. 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Service interprets the regulations to require that the prior experience have been salaried employment as well. The absence of specific statutory language requiring that the two years of work experience be full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in a religious occupation. Accordingly, volunteer activities do not constitute qualifying prior experience in a religious occupation within the meaning of section 101(a)(27)(C) of the Act.

In addition, the statute requires that the prior experience have been in a religious vocation or occupation. An occupation, by definition, implies a person's principal endeavor and means of financial support. A lay person volunteering with his or her religious organization is considered an expression of faith, rather than engagement in an occupation. The record in this case does not contain proof of the beneficiary's means of financial support in the United States. Absent a comprehensive description of the beneficiary's employment history, supported by credible documentation, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, for the two-year period. For these reasons, the petitioner has failed to demonstrate that the beneficiary had been continuously carrying on a religious occupation for at least the two years from November 1995 to November 1997.

The director expressed significant concern regarding the credibility of the instant petition, but did not expressly deny the petition on that basis. Beyond the discussion in the director's decision, the petitioner has failed to submit adequate evidence to demonstrate eligibility on other grounds. The petitioner has failed to establish that it is a qualifying organization exempt from, or eligible for exemption from, taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations pursuant to 8 C.F.R. 204.5(m)(3)(i). The letter from the IRS regarding tax exempt recognition for the "Victory Assembly" is in care of a consulting firm's post office box. Other documentation submitted to the record reflects three different addresses for the Victory Assembly. Based on the concerns raised by the director and the inconsistent identification of the physical location of the church, it must be concluded that the petitioner has failed to adequately establish that the petitioning entity is an operational religious

organization with tax exempt recognition. The petitioner also failed to submit the required documentation to establish its ability to pay the proffered wage set forth at 8 C.F.R. 204.5(g)(2). The record is also insufficient to establish that the proposed position constitutes a bona fide religious occupation pursuant to 8 C.F.R. 204.5(m)(2) or that the beneficiary is qualified to perform a religious occupation pursuant to 8 C.F.R. 204.5(m)(3)(ii)(D). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.